

Message Text

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ORIGIN L-03

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FM SECSTATE WASHDC

TO AMEMBASSY MADRID

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E.O. 11652: N/A

TAGS: CGEN, SP

SUBJECT: SUPPLEMENTARY EXTRADITION TREATY

REF: MADRID 4620

1. DEPT SUGGESTS THAT THE FIRST SENTENCE OF PARAGRAPH D OF ARTICLE XI OF THE 1970 TREATY BE AMENDED BY SUBSTITUTING THE FOLLOWING SENTENCE: QTE A PERSON ARRESTED UPON SUCH AN APPLICATION SHALL BE SET AT LIBERTY UPON THE EXPIRATION OF 45 DAYS FROM THE DATE WHEN THE FACT OF HIS ARREST IS COMMUNICATED THROUGH THE DIPLOMATIC CHANNEL IF A REQUEST FOR HIS EXTRADITION ACCOMPANIED BY THE DOCUMENTS SPECIFIED IN ARTICLE X SHALL NOT HAVE BEEN RECEIVED. UNQTE

2. ADDITIONALLY, THE DEPT REQUESTS THAT FURTHER CONSIDERATION BE GIVEN TO EXTENDING THE PERIOD OF TIME TO 60 DAYS FOR REQUESTS EMANATING FROM SPAIN AS OPPOSED TO THE 45 DAYS HERE PROPOSED. THE EXPERIENCE OF THE DEPT HAS BEEN THAT SUCH AN EXTENDED PERIOD WOULD BE NEEDED TO OBTAIN BY NORMAL DIPLOMATIC CHANNELS THE CERTIFICATION BY THE EMBASSY OF SPAIN OF THE EXTRADITION DOCUMENTS AS REQUIRED IN PARA. F OF ARTICLE X.

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3. AT THE PRESENT, THE DEPT HAS BEEN SENDING THE REQUIRED DIPLOMATIC NOTE AND EXTRADITION DOCUMENTS BY OFFICE SECRETARY BY TAXI TO THE SPANISH EMBASSY. THIS IS A WASTEFUL AND INEFFICIENT PROCEDURE.

4. THE DEPT HAS BEEN INFORMED THAT SPANISH LAW, UNLIKE U.S. LAW, DOES NOT REQUIRE FOREIGN EXTRADITION DOCUMENTS BE CERTIFIED BY THE CONCERNED SPANISH EMBASSY AND THAT THE GOS INSISTED ON THIS PROVISION IN THIS TREATY ONLY ON AN EQUAL DIGNITIES POINT. ACCORDINGLY, THE DEPT REQUESTS THE EMBASSY TO ASK SPANISH OFFICIALS TO CONSIDER DELETING THE PHRASE, QTE AND ARE CERTIFIED BY THE EMBASSY OF SPAIN IN THE UNITED STATES, UNQTE FROM PARA. F OF ARTICLE X.

5. IF THIS PROPOSED DELETION IS ACCEPTED BY THE GOS, THEN THE LANGUAGE IN PARA. 1 ABOVE IS ACCEPTABLE.

6. IF THIS PROPOSED DELETION IS NOT RPT NOT ACCEPTED BY THE GOS, THEN THE DEPT REQUESTS THE EMBASSY TO REQUEST THE GOS TO NEGOTIATE REDRAFTING OF THE LANGUAGE TO PROVIDE FOR 60 DAYS FOR DOCUMENTS EMANATING FROM SPAIN, WHILE RETAINING A PERIOD OF 45 DAYS FOR DOCUMENTS FROM THE U.S. THE DEPT BELIEVES THAT U.S. COURTS WOULD NOT AGREE TO HOLD FUGITIVES WITHOUT BAIL FOR MORE THAN 45 DAYS WITHOUT DOCUMENTS THOUGH SUCH MAY BE POSSIBLE IN SPAIN. DEPT NOTES THAT CERTIFICATION PROCEDURE BY EMBASSY IN WASHINGTON, D.C. IS RATHER UNUSUAL WITH RELATIVELY SMALL NUMBER OF COUNTRIES INSISTING ON SUCH A PROVISION.

7. THE DEPT IS UNABLE TO ACCOMMODATE REQUEST OF PARA. 5 OF REFTTEL SINCE THE EXECUTIVE BRANCH OF THE USG DOES NOT HAVE THE POWER TO BIND JUDGES OF STATE COURTS TO APPLY THE PERIOD OF PREVENTIVE DETENTION TO FULFILLMENT OF SENTENCE IMPOSED. THE DEPT NOTES THAT THE USUAL PRACTICE OF JUDGES LIMITED OFFICIAL USE

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IS TO SO APPLY THE PREVENTIVE DETENTION PERIOD, BUT IT CANNOT PROVIDE A GUARANTEE THAT SUCH WILL ALWAYS BE DONE. RUSH

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